

Judges Preserve Iran-Contra Material

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A three-judge panel yesterday ruled against deleting material from the final report on the Iran-contra investigation by independent counsel Lawrence E. Walsh but delayed release of the controversial volume 10 days to permit appeal to the Supreme Court.

Lawyers representing former president Ronald Reagan and former attorney general Edwin Meese III, who were among those seeking to block disclosure of the report's accusations against their clients, indicated yesterday they were considering an appeal to the high court, according to sources.

Yesterday's opinion of the three appellate judges, written by Reagan-appointee David B. Sentelle, sharply criticized Walsh's report as "rife with accusations of guilt of criminal conduct against persons never indicted or convicted."

But the judges ruled that release of the report is in the public interest. "Rather than extend the controversy over the supposed,

reported or suspected contents of the report, we have determined that the public interest will be served by actual disclosure," the opinion said.

Yesterday's decision came five months after Walsh, as required by the independent counsel law, turned over to the special judicial panel a sealed copy of the report of his seven-year investigation. The Iran-contra scandal involved sale of arms to Iran in the mid-1980s in exchange for the release of U.S. hostages, as well as diversion of some arms sale profits to aid contra rebels in Nicaragua.

By law, Walsh was required to produce "a detailed and official record" of his activities, including "the reasons for not prosecuting any matter within [his] prosecutorial jurisdiction . . ."

But the 81-year-old independent counsel, sources said, had used the report as a vehicle for making public material that would have come out during a trial of former defense secretary Caspar W. Weinberger and had been overlooked during the 1988 trials of former White House aides Oliver L. North and John M. Poindexter. Weinberger

was pardoned in December 1992 by then-President George Bush.

North and Poindexter, although found guilty in jury trials, had their convictions overturned because the courts determined tainted evidence had been used during the grand jury process and at the trial.

"The report repeatedly accuses named individuals of crimes," yesterday's opinion said, "although in many instances the individual was never indicted; if indicted, was never convicted; or if convicted, the conviction was reversed."

The accusations contained in Walsh's report, the panel said, "include charges that named individuals were guilty of a conspiracy charged in a count that was dismissed before trial, [and] that various named public officials engaged in efforts to obstruct justice, where such individuals were never indicted, let alone convicted."

In recommending the report's release, the judges said they did so "with the recognition that the rights of those persons accused of crimes for which they were never convicted are being compromised." In the end, however, they decided "the rights of all

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persons named are better protected by a full release with a contemporaneous right of comment than by withholding."

The panel also rejected motions that had sought to remove grand jury material Walsh has included in the report. Saying the rule protecting such material was "designed to protect secrecy," the panel concluded that secrecy "no longer exists" for such Iran-contra material since "most, if not all" of it in the final report had been published in Walsh's four previously released interim reports.

After receiving Walsh's report last year, the three-judge panel gave individuals mentioned in it time to read sections in which their names appeared and invited comments for inclusion when the report was published. On Dec. 1, the special panel ordered Walsh to prepare an additional volume to include the comments.

Meanwhile, lawyers for Reagan, Meese and North filed sealed motions to have material critical of their clients removed from the published report.

As the decision noted, the arguments over release of the report took the court

into previously untested legal areas. Never before had individuals attempted to halt publication of an independent counsel report or have parts of it deleted.

In a statement yesterday, the Landmark Legal Foundation, which represents Meese, noted the court's acknowledgment of "Walsh's abuses against persons who were not indicted."

It said the issue was "the constitutional rights of individuals to be protected from false, defamatory accusations by a system and prosecutor run amok."

While not saying exactly what it planned to do, the foundation said it "will continue to take all steps necessary" to protect Meese's constitutional rights. The only step left for the foundation, one source said, is to appeal to the Supreme Court.

Under court procedure, Chief Justice William H. Rehnquist, who has responsibility for the D.C. Circuit, would be the one to determine whether to grant a stay and thus further delay release of the Walsh report. Thereafter, it would take four justices to have the matter brought before the court for a hearing.